

SERRINS
FISHER LLP

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The Woolworth Building
233 Broadway, Suite 2340
New York, New York 10279
TEL 212.571.0700
FAX 212.233.3801
www.serrinsfisher.com

Via ECF

Hon. Roanne L. Mann
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *Barragan-Aquino, et. al. v. East Port Excavation & Utilities Contractors Inc., et. al.*
CV No.: 13-343(MKB)(RLM)

Dear Judge Mann:

We are counsel for the Plaintiffs in the above referenced action. Pursuant to Your Honor's Order dated July 31, 2014 and Individual Rules, Section 1(A), we are writing to provide the Court with a status of this case.

Nature of the Action

Plaintiffs were formerly employed by Defendants, providing carpentry services for New York City public schools from 2007 to 2012. They asserted federal, state, and local claims against Defendants for the failure to compensate the prevailing wage rate of pay as well as one and one-half times the prevailing wage rate of pay for overtime hours worked. Plaintiffs allege that they were always paid below the prevailing wage rates, which are published by the Office of the Comptroller for the City of New York pursuant to New York Labor Law § 220. By way of illustration, Plaintiffs alleged that they earned approximately \$30 to \$40 per hour in the relevant time frame. The prevailing wage for carpenters in the 2011-2012 time period, provided for an hourly rate of \$46.15 per hour and a supplemental benefit rate of \$38.50 per hour (a total of \$84.65 per hour). Because Plaintiffs were never paid their appropriate wages, they commenced this action against the subcontractors, general contractors, and construction managers for the projects to which they were assigned.

Defendants N.J.D Wiring, Peter Karageorgiou, Summit Construction Services, Inc., and Frank Giattino believe that there is no employer relationship sufficient to establish liability and contend that plaintiffs were employed solely by Defendant East Port Excavation & Utilities Contractors Inc. Accordingly, we have been advised that these defendants intend to make a motion dismissing claims against them on this ground. As indicated below, a similar motion by Defendants TDX Construction Corporation and James H. Jones was granted.

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However, Plaintiffs dispute the grounds asserted for the prospective dispositive motions relying on authority that general contractors have been held liable for subcontractors' failure to pay prevailing wages.

Procedural History

Plaintiffs commenced this action on January 17, 2014. Defendant East Port Excavation & Utilities Contractors Inc. (i.e. subcontractor) and general contractors (defendants One Ten Restoration Inc. and Amjad Nazir) defaulted. Defendants N.J.D Wiring & Electric, Inc. Peter Karageorgiou, Summit Construction Services, Inc., and Frank Giattino (general contractors) filed Answers to Plaintiffs' Complaint. Defendant TDX Construction Corporation and James H. Jones (construction managers) filed a motion to dismiss, which was granted. The remaining parties consented to a motion to transfer venue to the Eastern District Court of New York (Brooklyn). Venue in this courthouse is proper as the relevant witnesses and discovery are likely to be centered here in light of the fact that Plaintiffs worked for New York City public schools in the Queens/Brooklyn area.

Status

No settlement discussions have transpired. Due to the previous motions (the dispositive motion by TDX defendants and the consent motion to transfer venue), the parties have not had a Conference to set a discovery schedule for this matter. To date, Plaintiffs served Initial Disclosures. Plaintiffs were also served with a notice of deposition by Defendants N.J.D. Wiring and Peter Karageorgiou, which was held in abeyance pending motion practice. As such, a Conference to set forth a case management plan is respectfully requested.

Respectfully submitted,


Ann Macadangdang, Esq.

Cc:

Nathan Shook, Esq.

Gregory A. Tsonis, Esq.

(via ecf)